

1 **Senate Bill No. 414**

2 (By Senators McCabe and Snyder)

3 _____
4 [Introduced February 3, 2011; referred to the Committee on
5 Government Organization; and then to the Committee on Finance.]

6 _____
7 **FISCAL**
8 **NOTE**
9

10 A BILL to amend and reenact §5A-10-1, §5A-10-2, §5A-10-3, §5A-10-5,
11 §5A-10-6 and §5A-10-9 of the Code of West Virginia, 1931, as
12 amended; and to amend said code by adding thereto two new
13 sections, designated §5A-10-12 and §5A-10-13, all relating to
14 the responsibilities of the Real Estate Director; permitting
15 the director to acquire real property; permitting the
16 contracting for third-party real estate services; permitting
17 the spending units to be billed for the actual costs of those
18 third-party services; billing the spending units for the
19 services of the Real Estate Division; creating the Real
20 Property Fund; establishing what revenues are to be deposited
21 into that fund; requiring certain revenues to be deposited
22 into the fund instead of the General Revenue Fund;
23 establishing what moneys from the fund may be used for; and
24 exempting real property owned by the Department of Agriculture

1 and the West Virginia State Conservation Committee from
2 certain accounting and reporting requirements.

3 *Be it enacted by the Legislature of West Virginia:*

4 That §5A-10-1, §5A-10-2, §5A-10-3, §5A-10-5, §5A-10-6 and §5A-
5 10-9 of the Code of West Virginia, 1931, as amended, be amended and
6 reenacted; and that said code be amended by adding thereto two new
7 sections, designated §5A-10-12 and §5A-10-13, all to read as
8 follows:

9 **ARTICLE 10. REAL ESTATE DIVISION.**

10 **§5A-10-1. Division created; purpose; director.**

11 (a) There is hereby created the Real Estate Division within
12 the Department of Administration for the purpose of establishing a
13 centralized office to provide real property acquisition, leasing,
14 appraisal and other real estate services to the Secretary of the
15 Department of Administration.

16 (b) The division shall be under the supervision and control of
17 an executive director, who shall be appointed by the Governor, by
18 and with the advice and consent of the Senate.

19 (c) ~~Candidates for the position of~~ The executive director
20 shall:

21 (1) Have at least a bachelor of arts or science degree from an
22 accredited four-year college or university; and

23 (2) (A) Be a licensed real estate broker, pursuant to the
24 provisions of article forty, chapter thirty of this code; or

1 (B) Be a licensed or certified real estate appraiser pursuant
2 to the provisions of article thirty-eight, chapter thirty of this
3 code; or

4 (3) (A) ~~Be considered based on their~~ Have demonstrated
5 education, knowledge and a minimum of ten years' experience in the
6 areas of commercial real estate leasing, commercial real estate
7 appraisal; or

8 (B) ~~Any relevant~~ Have experience of a minimum of ten years
9 which demonstrates an ability to effectively accomplish the
10 purposes of this article.

11 (d) The Real Estate Division is authorized to employ such
12 employees, including, but not limited to, real estate appraisers
13 licensed in accordance with the provisions of article thirty-eight,
14 chapter thirty of this code, as may be necessary to discharge the
15 duties of the division.

16 **§5A-10-2. Leases for space to be made in accordance with article;**
17 **exceptions.**

18 (a) Notwithstanding any other provision of this code, no
19 department, agency or institution of state government may acquire,
20 lease, or offer to lease, as lessee, any real property, grounds,
21 buildings, office or other space except in accordance with the
22 provisions of this article and article three of this chapter.

23 (b) The provisions of the article, except as to office space,
24 do not apply to the Division of Highways of the Department of

1 Transportation.

2 (c) The provisions of this article do not apply to:

3 (1) Public lands, rivers and streams acquired, managed or
4 which title is vested in or transferred to the Division of Natural
5 Resources of the Department of Commerce, pursuant to section seven,
6 article one, chapter twenty of this code and section two, article
7 five of said chapter;

8 (2) The Higher Education Policy Commission;

9 (3) The West Virginia Council for Community and Technical
10 College Education;

11 (4) The institutional boards of Governors in accordance with
12 the provisions of subsection (v), section four, article five,
13 chapter eighteen-b of this code;

14 (5) The real property held by the Department of Agriculture,
15 including all institutional farms, easements, mineral rights,
16 appurtenances, farm equipment, agricultural products, inventories,
17 farm facilities and operating revenue funds for those operations;

18 (6) The real property held by the West Virginia State
19 Conservation Committee, including all easements, mineral rights,
20 appurtenances and operating revenue funds for those operations; or

21 (7) The Adjutant General's Department and the West Virginia
22 National Guard, including all real property, acquisitions, leases,
23 easements, armories, armory projects, appurtenances and operating
24 revenue funds for those operations.

1 **§5A-10-3. Powers and duties of Real Estate Division.**

2 The Real Estate Division has the following powers and duties:

3 (1) To provide real property acquisition, leasing, appraisal
4 and other real estate services to the Secretary of the Department
5 of Administration and to state spending units;

6 (2) The Real Estate Division may contract for any necessary
7 third-party real estate services to effectuate this section,
8 including, but not limited to, appraisals, surveys, property legal
9 descriptions, title searches and opinions and space planning, and
10 may invoice spending units for the spending unit's actual costs and
11 expenses associated with such necessary third-party real estate
12 services;

13 (3) Before July 30 of each year, the Real Estate Division may
14 charge each spending unit for the costs and services related to the
15 Real Estate Division providing acquisition, leasing, appraisal, and
16 other real estate services to the spending units, except those
17 spending units that are exempt under section two, article ten,
18 chapter five-a of this code:

19 (A) For the fiscal year immediately subsequent to the
20 reenactment of this article, the Real Estate Division shall be
21 primarily funded through general revenue in an amount up to, but
22 not to exceed, the amount requested by the Real Estate Division for
23 that fiscal year. For any additional budgetary needs, the Real
24 Estate Division may charge a flat fee on a per square foot basis

1 for each of the spending units' leases, whether for the occupancy
2 of space from a private party or state-owned property.

3 (B) For every fiscal year thereafter, the Real Estate Division
4 shall be solely funded through special revenue and may charge a
5 flat fee on a per square foot basis for each of the spending units'
6 leases, whether for the occupancy of space from a private party or
7 state-owned property . The Real Estate Division shall reevaluate
8 its budgetary needs, determine its flat fee charge, and submit its
9 new budgetary request to the State Budget Office by August 30 of
10 each calendar year for the applicable fiscal year;

11 (4) For those spending units that are exempt under section two
12 of this article and who request the assistance of the Real Estate
13 Division, the Real Estate Division shall charge and invoice such
14 spending units on a fee-for-service basis for all real estate
15 services and costs expended and incurred by the Real Estate
16 Division;

17 (5) The Real Estate Division's authority to bill or invoice
18 spending units for real property costs, expenses and services under
19 subdivisions (2), (3) and (4) of this subsection shall be in
20 accordance with sections twelve and thirteen of this chapter.

21 ~~(2)~~ (6) To ensure that the purchase of real estate and all
22 contracts for lease are based on established real estate standards
23 and fair market price;

24 ~~(3)~~ (7) To develop and implement minimum lease space standards

1 for the lease of any grounds, buildings, office or other space
2 required by any spending unit of state government;

3 ~~(4)~~ (8) To develop and implement minimum standards for the
4 selection and acquisition, by contract or lease, of all grounds,
5 buildings, office space or other space by a spending unit of state
6 government except as otherwise provided in this article;

7 ~~(5)~~ (9) To establish and maintain a comprehensive database of
8 all state real estate contracts and leases;

9 ~~(6)~~ (10) To develop policies and procedures for statewide real
10 property management;

11 ~~(7)~~ (11) To maintain a statewide real property management
12 system that has consolidated real property, building and lease
13 information for all departments, agencies and institutions of state
14 government;

15 ~~(8)~~ (12) To develop and maintain a centralized repository of
16 comprehensive space needs for all state departments, agencies and
17 institutions of state government, including up-to-date space and
18 resource utilization, anticipated needs and recommended options;

19 ~~(9)~~ (13) To provide statewide policy leadership and coordinate
20 master planning to guide and organize capital asset management; and

21 ~~(10)~~ (14) To provide assistance to all state departments,
22 agencies or institutions in acquiring, leasing and disposing of
23 real property.

24 **§5A-10-5. Selection of grounds, etc.; acquisition by contract or**

1 **lease; long-term leases.**

2 (a) The executive director has sole authority to select and to
3 acquire by deed, contract or lease, in the name of the state, all
4 grounds, buildings, office space or other space, the rental of
5 which is necessarily required by any spending unit, upon a
6 certificate from the chief executive officer or his or her designee
7 ~~of said spending unit~~ that the grounds, buildings, office space or
8 other space requested is necessarily required for the proper
9 function of said spending unit, that the spending unit will be
10 responsible for all rent and other necessary payments in connection
11 with the contract or lease and that satisfactory grounds,
12 buildings, office space or other space is not available on grounds
13 and in buildings now owned or leased by the state.

14 (b) The executive director shall, before executing any rental
15 contract or lease, determine the fair rental value for the rental
16 of the requested grounds, buildings, office space or other space,
17 in the condition in which they exist and shall contract for or
18 lease said premises at a price not to exceed the fair rental value
19 thereof.

20 (c) The executive director may enter into long-term agreements
21 for buildings, land and space for periods longer than one fiscal
22 year: *Provided*, That such long-term lease agreements are not for
23 periods in excess of forty years, except that the secretary may, in
24 the case of the Adjutant General's department, enter into lease

1 agreements for a term of fifty years or a specific term of more
2 than fifty years so as to comply with federal regulatory
3 requirements and shall contain, in substance, all the following
4 provisions:

5 (1) That the Department of Administration, as lessee, has the
6 right to cancel the lease without further obligation on the part of
7 the lessee upon giving thirty days' written notice to the lessor;
8 ~~such notice being given at least thirty days prior to the last day~~
9 ~~of the succeeding month;~~

10 (2) That the lease shall be considered canceled without
11 further obligation on the part of the lessee if the State
12 Legislature or the federal government should fail to appropriate
13 sufficient funds therefor or should otherwise act to impair the
14 lease or cause it to be canceled; and

15 (3) That the lease shall be considered renewed for each
16 ensuing fiscal year during the term of the lease unless it is
17 canceled by the Department of Administration before the end of the
18 then current fiscal year.

19 **§5A-10-6. Long-term leases of public lands for wireless**
20 **communication towers.**

21 (a) Notwithstanding any provision of law to the contrary, the
22 executive director has sole authority to negotiate and enter into
23 long-term lease agreements for lease of public lands to be used for
24 placement of wireless communication towers: *Provided*, That such

1 long-term lease agreements may not be for periods in excess of
2 thirty years: *Provided, however,* That for the governmental units
3 named in subsection (d) of this section, any lease proposed by the
4 executive director may only be entered into upon approval in
5 writing of the ranking administrator of the respective governmental
6 unit described in said subsection.

7 (b) All revenues derived from leases established upon the
8 enactment of this section shall be deposited into the ~~General~~
9 ~~Revenue~~ Real Property Fund unless the property is subject to a
10 pledge of its revenues in connection with a preexisting revenue
11 bond issue, except as provided in subsections (c) and (d) of this
12 section.

13 (c) Revenues from leases initiated prior to the enactment of
14 this section or subsequently renewed shall continue to be treated
15 as they were prior to the enactment of this section.

16 (d) Revenues derived from the lease of property under the
17 control of the Department of Transportation shall be deposited into
18 the State Road Fund. Revenues derived from the lease of property
19 under the control of the Division of Natural Resources shall be
20 retained by the Division of Natural Resources and deposited into
21 the appropriate fund. Revenues derived from the lease of property
22 under the control of the Department of Agriculture shall be
23 deposited into the Agriculture Fees Fund. Revenues derived from
24 the lease of property under the control of the Division of Forestry

1 shall be deposited into the Division of Forestry Fund. Revenues
2 derived from the lease of property under the control of
3 institutions of higher education shall be deposited into the
4 institution's education and general capital fees fund. Revenues
5 derived from the lease of property under the control of the Higher
6 Education Policy Commission shall be deposited into the
7 commission's State Gifts Grants and Contracts Fund. Revenues
8 derived from the lease of property under the control of the West
9 Virginia Council for Community and Technical College Education
10 shall be deposited into the council's Tuition and Required
11 Educational and General Fees Fund.

12 (e) Any long-term lease agreement entered into pursuant to
13 this section shall contain provisions allowing for the nonexclusive
14 use of the public lands and allowance for use of the same public
15 space for additional towers by competing persons or corporations.

16 (f) The executive director is further authorized to enter into
17 long-term lease agreements for additional wireless communication
18 towers by other persons or corporations upon the same public lands
19 in which there already exists a lease and tower provided for under
20 this section.

21 (g) Any long-term lease agreement entered into pursuant to
22 this section shall be recorded in the office of the county clerk
23 where public land which is the subject of the lease agreement is
24 located.

1 **§5A-10-9. Real property accounting and records.**

2 (a) All real property owned or leased by the state shall be
3 accounted for by the state spending unit that owns, leases or is in
4 the possession of the real property.

5 (b) Each state spending unit shall establish and maintain a
6 record of each item of real property it owns and/or leases and
7 annually furnish its records to the Real Estate Division.

8 (c) The accounting and reporting requirements of this section,
9 except as to office space, do not apply to:

10 (1) The Division of Highways of the Department of
11 Transportation;

12 (2) Public lands, rivers and streams acquired, managed or
13 which title is vested in or transferred to the Division of Natural
14 Resources of the Department of Commerce, pursuant to section seven,
15 article one, chapter twenty of this code and section two, article
16 five of said chapter;

17 (3) The Higher Education Policy Commission;

18 (4) The West Virginia Council for Community and Technical
19 College Education;

20 (5) The institutional boards of Governors in accordance with
21 the provisions of subsection (v), section four, article five,
22 chapter eighteen-b of this code; ~~or~~

23 (6) The Adjutant General's Department and the West Virginia
24 National Guard;

1 (7) The real property held by the Department of Agriculture,
2 including all institutional farms, easements, mineral rights,
3 appurtenances, farm equipment, agricultural products, inventories,
4 farm facilities and operating revenue funds for those operations;
5 or

6 (8) The real property held by the West Virginia State
7 Conservation Committee, including all easements, mineral rights,
8 appurtenances and operating revenue funds for those operations.

9 (d) With regard to public lands that may be by law
10 specifically allocated to and used by any state agency,
11 institution, division or department, such agency, institution,
12 division or department shall provide an inventory of such public
13 land(s) to the Public Land Corporation in accordance with the
14 provisions of article eleven of this chapter.

15 (e) The records furnished to the Real Estate Division shall
16 include the following information, if applicable:

17 (1) A description of each item of real property including:

18 (A) A reference to a book, page and/or image number from the
19 county records in a particular county; or

20 (B) A legal description;

21 (2) The date of purchase and the purchase price of the real
22 property;

23 (3) The date of lease and the rental costs of the real
24 property;

1 (4) The name of the state spending unit holding title to the
2 real property for the state;

3 (5) A description of the current uses of the real property and
4 the projected future use of the real property; and

5 (6) A description of each building or other improvement
6 located on the real property.

7 (f) If the description of real property required under this
8 section is excessively voluminous, the Real Estate Division may
9 direct the spending unit in possession of the real property to
10 furnish the description only in summary form, as agreed to by the
11 division and the spending unit.

12 **§5A-10-12. Real Property Fund.**

13 (a) There is created in the State Treasury a special revenue
14 fund to be known as the "Real Property Fund." The Real Property
15 Fund may be given appropriations as determined by the Governor and
16 the Legislature but shall operate as a special revenue fund. This
17 fund consists of moneys deposited into it pursuant to this article
18 and interest earned on investments made from moneys in the fund.

19 (b) Moneys from the Real Property Fund shall be expended by
20 the executive director of the Real Estate Division of the
21 Department of Administration for the acquisition of real property
22 and to pay for costs, expenses, and services associated with
23 acquisition, leasing, appraisal and other real estate services
24 provided to the Secretary of Administration on behalf of the State

1 of West Virginia and other spending units subject to the discretion
2 of both the Secretary of the Department of Administration and the
3 Governor.

4 **§5A-10-13. Authority to bill for services.**

5 (a) Each spending unit served by the Real Estate Division is
6 authorized and directed to transfer to the Real Estate Division for
7 deposit into the Real Property Fund the charges, as invoiced by the
8 Real Estate Division, for that spending unit's actual costs and
9 expenses associated with third-party real estate services, as
10 approved by the Secretary of Administration;

11 (b) Each spending unit served by the Real Estate Division is
12 authorized and directed to transmit to the Real Estate Division,
13 upon receipt of an annual invoice from the Real Estate Division and
14 for deposit into the Real Property Fund, the flat fee on a per
15 square foot basis for each of the spending units' leases, whether
16 for the occupancy of space from a private party or state-owned
17 property pursuant to paragraphs (A) and (B), subdivision three,
18 section three of this article, except for those spending units that
19 are exempt under section two, article ten, chapter five-a of this
20 code;

21 (c) Those spending units that are exempt under section two,
22 article ten, chapter five-a of this code, and who request the
23 assistance of the Real Estate Division are authorized and directed
24 to transfer to the Real Estate Division for deposit into the Real

1 Property Fund the charges, as invoiced by the Real Estate Division,
2 for all real estate services and costs expended and incurred by the
3 Real Estate Division.

4 (d) The executive director shall maintain accurate records
5 reflecting the cost of administering the provisions of this
6 article.

NOTE: The purpose of this article relates to the responsibilities of the Real Estate director. The bill permits the director to acquire real property and to contract for third-party real estate services. The bill permits the spending units to be billed for the actual costs of those third-party services and to be billed for the services of the Real Estate Division. The bill creates the Real Property Fund and establishes what revenues are to be deposited into that fund. The bill requires revenue associated with wireless communication towers to be deposited into the fund instead of the General Revenue Fund, unless the property is subject to a pledge of its revenues in connection with a preexisting revenue bond issue. The bill establishes what moneys from the fund may be used for. The bill also exempts real property owned by the Department of Agriculture and the West Virginia State Conservation Committee from certain accounting and reporting requirements.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§5A-10-12 and §5A-10-13 are new; therefore, strike-throughs and underscoring have been omitted.